

Translation

# PATENT COOPERATION TREATY PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference <b>0000054420</b>	FOR FURTHER ACTION	See Form PCT/IPEA/416
International application No. <b>PCT/EP2004/003346</b>	International filing date ( <i>day/month/year</i> ) <b>30.03.2004</b>	Priority date ( <i>day/month/year</i> ) <b>02.04.2003</b>
International Patent Classification (IPC) or national classification and IPC     		
<p>Applicant <b>BASF AKTIENGESELLSCHAFT</b></p>		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <b>6</b> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s))             _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>																	
<p>4. This report contains indications relating to the following items:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"><input checked="" type="checkbox"/></td> <td style="width: 85%;">Box No. I Basis of the report</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. II Priority</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. IV Lack of unity of invention</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td>Box No. VI Certain documents cited</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VII Certain defects in the international application</td> </tr> <tr> <td><input type="checkbox"/></td> <td>Box No. VIII Certain observations on the international application</td> </tr> </table>		<input checked="" type="checkbox"/>	Box No. I Basis of the report	<input type="checkbox"/>	Box No. II Priority	<input type="checkbox"/>	Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI Certain documents cited	<input type="checkbox"/>	Box No. VII Certain defects in the international application	<input type="checkbox"/>	Box No. VIII Certain observations on the international application
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Date of submission of the demand	Date of completion of this report
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2004/003346

## Box No. I

## Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- This report is based on translations from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of:
- international search (Rule 12.3 and 23.1(b))
  - publication of the international application (Rule 12.4)
  - international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

- the international application as originally filed/furnished  
 the description:

pages 1-25 as originally filed/furnished

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- the claims:

nos. 1-8 as originally filed/furnished

nos.\* \_\_\_\_\_ as amended (together with any statement) under Article 19

nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

nos.\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- the drawings:

sheets \_\_\_\_\_ as originally filed/furnished

sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

sheets\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

- a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3.  The amendments have resulted in the cancellation of:

- the description, pages \_\_\_\_\_
- the claims, nos. \_\_\_\_\_
- the drawings, sheets/figs \_\_\_\_\_
- the sequence listing (*specify*): \_\_\_\_\_
- any table(s) related to sequence listing (*specify*): \_\_\_\_\_

4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages \_\_\_\_\_
- the claims, nos. \_\_\_\_\_
- the drawings, sheets/figs \_\_\_\_\_
- the sequence listing (*specify*): \_\_\_\_\_
- any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.  
PCT/EP2004/003346

Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
1. Statement		
Novelty (N)	Claims	1 - 8 YES
	Claims	_____ NO
Inventive step (IS)	Claims	1 - 8 YES
	Claims	_____ NO
Industrial applicability (IA)	Claims	1 - 8 YES
	Claims	_____ NO
2. Citations and explanations (Rule 70.7)		
<p>See Supplemental Box.</p>		

**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**

International application No.

PCT/EP2004/003346

**Box No. VI      Certain documents cited**

## 1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)

**See Supplemental Box.**

## 2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)

**Supplemental Box**

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

**Boxes VI and V**

The following documents are cited as the closest prior art:

- D1: EP-A-O 550 113 (SHELL INT RESEARCH)  
7 July 1993 (1993-07-07)
- D2: WO 02/083676 A (BASF AG; ALBERT GUIDO (DE); REHNIG ANNEROSE (DE); AMMERMANN EBERHARD)  
24 October 2002 (2002-10-24)
- D3: EP-A-O 834 513 (AMERICAN CYANAMID CO)  
8 April 1998 (1998-04-08)
- D4: WO 02/46195 A (BASF AG)  
13 June 2002 (2002-06-13)
- D5: WO 03/080615 A (GRAMMENOS WASSILIOS; RHEINHEIMER JOACHIM (DE); BASF AG (DE); GEWEHR M)  
2 October 2003 (2003-10-02).

It has been assumed that the priority has been correctly claimed. In this case, documents such as D5 that were published between the priority date and the filing date of the present application have not been taken into consideration in the PCT procedure (**Box VI**).

In the light of documents D1 to D4, the claimed subject matter of the present application appears to be novel (PCT Article 33(2)) and inventive (PCT Article 33(3)) (**Box V**).

/...

**Supplemental Box**

Documents D1 and D2 disclose fungicidal compounds with general formulas (see claim 1 in each document) that overlap the general formula claimed in the present application. However, the presently claimed formula I can be considered to be a selection from the general formulas disclosed in documents D1 to D4 (see claim 1 in each document) with regard to the substituent R<sup>2</sup> which, according to the statement of claim, can only be a substituted or an unsubstituted C<sub>3</sub>-C<sub>10</sub>-alkynyl. In documents D1 to D4, no explicitly disclosed compound carries an alkynyl substituent in this position.

The technical problem addressed by the present application was that of developing further fungicides.

By means of comparative tests using compounds from D4, the applicant has demonstrated the improved effect of the compounds according to the present application relative to certain of those known from D4, which differ by virtue of the aforementioned alkynyl substituent.